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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RYAN JACKSON, MAJORITY STAFF DIRECTOR
BETTINA POIRIER, DEMOCRATIC STAFF DIRECTOR

May 13, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy,

On behalf of the Senate Committee on Environment and Public Works, we would like to thank you for testifying before the Committee on Tuesday, April 19, 2016. The committee greatly appreciates your attendance and participation in this hearing.

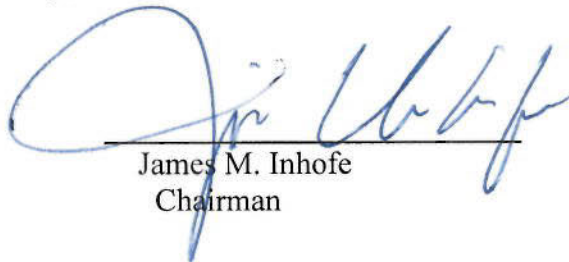
In order to maximize the opportunity for communication between you and the Committee, follow-up questions have been submitted by the members. To comply with Committee rules, please e-mail a copy of your responses to Elizabeth.Olsen@epw.senate.gov or deliver one hard copy within 14 days after the date of this letter. Responses should be delivered to the EPW Committee at 410 Dirksen Senate Office Building, Washington, DC 20510. Due to security restrictions, only couriers or employees with government identification will be permitted to bring packages into the building.

If you have any questions about the requests or the hearing, please feel free to contact Ryan Jackson, Staff Director of the Committee Majority Staff at (202) 224-6176 or Bettina Poirier, Staff Director of the Minority Committee staff at (202) 224-8832.

Sincerely,



Barbara Boxer
Ranking Member



James M. Inhofe
Chairman

Senate Committee on Environment and Public Works
hearing entitled, “Examining the President’s FY 2017 budget request for the U.S.
Environmental Protection Agency”
Tuesday, April 19, 2016
Questions for the Record for witness
Administrator Gina McCarthy

Chairman Senator Inhofe:

1. EPA is required to issue ozone implementation guidance. However, despite 90% of the states that commented on the proposed standard requested EPA propose an implementation rule at the time the Agency finalized the standard, EPA will not propose an implementation rule until October 2016. Yet, we know EPA is dedicating air office officials toward the stayed-Clean Power Plan-related activities. Why are you not doing something 90% of states commenting, reflecting a bipartisan consensus, requested, rather than pursuing actions that are legally vulnerable and being challenged by more than half the states?
2. Administrator McCarthy, as you know, I have long been concerned about the integrity of the selection process for nominations to the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB). I was surprised to learn in response to my February 2, 2016, letter on the most recently appointed members of CASAC that each of those selected were nominated not by the public, rather, they were all nominated by the EPA or an EPA designated federal officer. Essentially, anyone nominated by an individual outside of the agency’s network was not selected. Are you concerned by this finding? What is the point of soliciting public nominations if the EPA only selects those internally appointed?
3. Administrator McCarthy, as part of the FY 2016 omnibus, EPA was required to develop a policy statement on policy statement for its Science Advisory Board, which would include goals on increasing membership from states and tribes, as well as update its conflict of interest policy. This was to be submitted to GAO for review last month. I understand it is still outstanding. What is the reason for delay and when does the Agency plan to submit this policy statement?
4. Administrator McCarthy, last May GAO issued a report on the SAB entitled, “EPA’s Science Advisory Board: Improved Procedures Needed to Process Congressional Requests for Scientific Advice,” that included four recommendations – all of which remain unimplemented. What is the reason for delay in fulfilling these recommendations?
5. At a March 9 full committee hearing with state environmental regulators, we received testimony that EPA has increasingly issued federal implementation plans while simultaneously slow-walking review of state implementation plans. Although I understand EPA has made some progress in addressing the SIP backlog, can you please

provide the Committee a breakdown of the status of EPA's work towards reducing the SIP backlog?

6. In July 2015, the EPA, as part of the Interagency Working Group on the Social Cost of Carbon (SCC), requested the National Academy of Sciences review the SCC. How much funding for NAS's review has EPA committed?
7. For FY2016 Congress appropriated \$21 in multipurpose grants to states and tribes, which EPA requested zero funding for in its FY2017 budget request. Can you please explain the reason for eliminating funds for this program? In early April, EPA released its formula for disbursing the grants, with more than 60% going to "core air regulatory work;" yet Congress stipulated the grants were to provide "states and tribes to have the flexibility to direct resources." How does EPA's formula provide states and tribes flexibility to use these grants?

Senator Gillibrand:

Administrator McCarthy, thank you for testifying here today, and for your continued leadership at the EPA to protect clean air and clean water, and address the urgent threats we face from climate change. The EPA has a critical responsibility to protect the health of our families; whether it is working to ensure that our children in the Bronx can go outdoors in the summer without fear of an asthma attack, or that families in Upstate New York can swim and fish in our lakes, rivers and streams without fear of pollution by harmful runoff and algae blooms. While we still have much work to do to fully realize those goals, initiatives like the Clean Power Plan and the Clean Water Rule have helped us move the ball forward, and I continue to support those efforts.

I would like to ask you about 2 areas of concern I have that are specific to New York:

8. As I am sure you are aware, EPA Region 2 has been working to address a situation in the Village of Hoosick Falls, in Upstate New York, where drinking water has been contaminated by the chemical PFOA.

A significant concern is that PFOA is an "unregulated contaminant" under the Safe Drinking Water Act, which limited the EPA's ability to respond to PFOA contamination, and led to an initially false assumption that the drinking water in Hoosick Falls was safe to drink, when it was in fact likely making people very sick. This is nothing short of an

environmental disaster for the families who have been affected by PFOA contamination in their water.

- a. What would it take to reclassify PFOA so that it is regulated under the Safe Drinking Water Act?
 - b. Given the attention that has been placed on PFOA, and concerns that have been raised both in New York and other New England states about its prevalence in our region and potential health impacts, what additional steps can be taken to protect the public from PFOA?
9. On February 1st, I wrote to Region 2 Regional Administrator Judith Enck, asking the EPA to expedite the process for listing Hoosick Falls as a federal Superfund site. Will you commit to me that you will personally ensure that this process moves as quickly as possible and that EPA will be aggressive in ensuring that the contamination is remediated?
10. Another area of concern for me is the Hudson River. I appreciate that the EPA agreed to start its Second 5-year review to assess whether dredging was fully successful in meeting the goals of EPA's 2002 Record of Decision. However, I am concerned by a white paper published by the EPA last month that dismisses data presented by the National Oceanographic and Atmospheric Administration about the continued presence of PCBs in the Hudson River, and the long-term effects on fish populations; concerns that are shared by the US Fish and Wildlife Service, which is also a Hudson River Federal Trustee. The EPA white paper states, "EPA does not have any evidence at this time to suggest anything other than that the project is a success." I'm sorry to say that, to the contrary, many of my constituents in New York view the fact that PCBs remain in the Hudson River as a failure.
 - a. What purpose does it serve for the EPA to release a white paper dismissing data presented NOAA – which has a responsibility for the Hudson River a Federal Trustee - before your agency even begins its 5 year review?

- b. Will you ensure that all relevant evidence and data is evaluated during the course of the 5 year review, and that the Federal Trustees have a seat at the table so that EPA can work with them cooperatively to ensure that we are doing everything possible to fully restore and protect the Hudson River?

Senator Rounds:

- 11. We have held several hearings in which state and local officials have come to testify about the challenges of implementing EPA regulations on a limited budget with limited resources. This is particularly problematic in South Dakota, where the Department of Environment and Natural Resources is a small staff with a limited budget and is required to oversee the implementation and compliance with state and federal regulations. Although we have repeatedly heard your agency say that there are resources to help states comply with regulations, I am increasingly concerned with the amount of what I consider to be unfunded mandates coming out of your agency.
 - a. Again, although you have said there are resources to help states comply with EPA regulations, I have heard time and time again that this is not the case as these limited resources are spread out among all of the states. What do you tell states who are repeatedly telling you that they simply don't have the resources to comply with these vast, comprehensive EPA regulations?
 - b. Do you plan to do anything more to help states comply with current and future EPA regulations?
- 12. Last year the Subcommittee on Superfund, Waste Management, and Regulatory Oversight held a hearing on EPA's use of Regulatory Impact Analyses (RIA's) and the cost and benefit of EPA regulations. At the hearing we discussed a July 2014 GAO report that offered several recommendations for how EPA could improve adherence to OMB guidance, enhance the accuracy of RIA's and better monetize the cost and benefits of RIA's.
 - a. I am concerned that EPA continued to promulgate major, costly regulations, such as WOTUS and the Clean Power Plan, without fully implementing GAO's recommendations. I understand these recommendations are still open, when can we expect they will be fully implemented?
 - b. How do you explain the reliability of recent EPA regulations, if they were promulgated through a process that GAO specifically suggested might not be entirely accurate and needed improvement?
- 13. Last month, the Subcommittee on Superfund, Waste Management, and Regulatory

Oversight hosted a hearing on small business impacts from EPA regulations, and we received testimony regarding a number of instances where the EPA has disagreed with the Office of Advocacy's recommendations on a particular rulemaking. Our witnesses testified that there is no mechanism in the law that reconciles these differences between the EPA and the Office of Advocacy. I asked at the hearing for you to share how you view the Office of Advocacy's recommendations and how seriously you consider these recommendations throughout the rulemaking process, to which you said you do take Advocacy's comments into account. However, there are many instances where the Agency, in fact, takes action against Advocacy's recommendation. Do you think a third party arbiter would help reconcile differences between EPA and Advocacy?

14. At the same subcommittee hearing, we received testimony that there are opportunities for EPA to increase transparency with its implementation of the Regulatory Flexibility Act. For example, one witness testified that EPA could make its final SBREFA report public at the time complete rather than waiting until a rule is issued, something OSHA already does with its SBREFA reports. Why does EPA wait until a rule is issued to release its SBREFA report? Don't you think the public and regulated entities, such as small businesses, would benefit from the report being made publicly available as soon as complete? Will you commit to making these reports public when complete moving forward?
15. The courts have held agencies are not required to consider indirect or secondary impacts of a rule for purposes of the Regulatory Flexibility Act. However, I understand that the compliance burden is on the states, but often small businesses are significantly indirectly impacted by regulations, regardless of who has the burden of complying with the regulations.
 - a. Do you believe indirect impacts on small businesses should be considered and do you think a rulemaking would benefit from greater small business input early in the rule development process?

Senator Wicker:

16. EPA allows some non-point source nutrient reduction initiatives under EPA's watershed trading program, but there is no usable process to allow this to occur. Do you think EPA needs to do more to allow watershed trading to occur? Are legislative changes to the Clean Water Act necessary to make watershed trading usable?
17. Are Tier 2 public notices (PN) for the EPA disinfection by-products rules eligible for electronic reporting or annual notice (similar to Tier 3 PNs)?
18. In your testimony on April 19, you stated that the National Radon Action Plan (NRAP) will replace the Federal Radon Action Plan (FRAP). The major differences between FRAP and NRAP are that NRAP has no dedicated funding plan like the State Indoor Radon Grant (SIRG) program and the major responsibilities are pushed to the states and

private sector. How will NRAP be successful without federal funding and active federal leadership? Is there a plan or need to create a SIRC program within NRAP to make it successful?

19. You justified EPA's cuts in funding for SIRC in part by saying that SIRC funding to some states has not been very effective. Can EPA modify the grant allocation to make SIRC more effective? Please comment and assess ways to improve SIRC rather than eliminate it.
20. If SIRC is eliminated, will EPA undertake and maintain the state listings of certified radon professionals? How will the agency ensure that consumers are not subject to fraud from uncertified professionals using equipment that may not be calibrated and traceable to a radon standard or a radon decay product standard, particularly in non-regulated states? Please provide a list of state grantees and indicate which states are likely to continue their current investment in radon in the absence of federal SIRC funding.
21. The last federal surveys and state radon mapping occurred nearly three decades ago. Several states have updated state risk data with their own maps that show a larger risk than initial assessments. Does EPA have any plans to update the EPA radon risk maps?
22. The US Green Building Council recently announced the LEED green building rating system will now award credit for forest products certified to the SFI and ATFS standards. I understand that the EPA is re-examining its interim recommendations regarding the use of environmental standards and labels in federal procurement for lumber. Can you please tell me what your agency is doing to reconsider your recommendation and ensure that it appropriately recognizes other credible standards like Sustainable Forestry Initiative (SFI) and the American Tree Farm System (ATFS)? Can you give me an assurance that you will move quickly with this review and provide a timeline when a decision will be made?